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Attorneys for Petitioner
H.J. BAKER & BRO., INC.

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

**In the Matter of Cleanup and Abatement
Order No. R-5-2008-0710**

PETITION FOR REVIEW

Cal. Water Code § 13304, § 13320 & § 13267
23 CCR § 2050

H.J. Baker & Bro. Inc., ("Petitioner") hereby files this petition for review to the State Water Resources Control Board ("State Board") of that certain Cleanup and Abatement Order No. R-5-2008-0710 ("Cleanup Order") issued on January 16, 2009, by the Executive Officer of the California Regional Water Quality Control Board, Central Valley Region ("Regional Board"). This petition for review is filed pursuant to the Water Code §§ 13304, 13320, 13267 and 23 CCR § 2050. A copy of the Cleanup Order is attached hereto as Exhibit A.

Petitioner requests the State Board to hold this petition in abeyance pursuant to 23 CCR § 2050.5. Petitioner reserves its right to seek a stay of the Cleanup Order by the State Board.

I. Name and Address of Petitioner

Petitioner is H.J. Baker & Bro. Inc. Petitioner's address is 65 Stork Road, Stockton, CA 95201. Petitioner may be contacted through its counsel of record.

II. The Regional Board Action for Which this Petition for Review is Sought

The Regional Board action for which this petition is filed is the issuance of Cleanup and Abatement Order No. R-5-2008-0710, dated January 16, 2009.

III. The Date the Regional Board Acted

The date of the Regional Board's action subject to review is January 16, 2009.

IV. Statement of Reasons the Action is Inappropriate and Improper

The issues raised in this petition were presented to the Regional Board before its issuance of the Cleanup Order. The issuance of the Cleanup Order was beyond the authority of

the Regional Board, inappropriate, improper, or not supported by the record, for the following reasons:

A. The Cleanup Order presents factual assertions that are unsupported by the evidence, including, for example, Petitioner's purported impact on groundwater and the generation of sulfur drift.

B. The Cleanup Order's prohibition on the discharge or release of sulfur prill, sulfur fines, and/or sulfur-contact water, is overly broad and beyond the authority and jurisdiction of the Regional Board.

C. The Cleanup Order imposes sweeping prohibitions on the ponding of water, which exceeds the authority and jurisdiction of the Regional Board.

D. The Cleanup Order requires Petitioner to track and report the off-site disposal of sulfur-contact water, in excess of the Regional Board's authority.

E. The Cleanup Order requires Petitioner to monitor its stockpile of sulfur prill product, which is not a waste, in excess of the Regional Board's authority and in any event has been shown by overwhelming evidence not to be a source of sulfur drift.

F. The Cleanup Order imposes requirements on the maintenance and operation of an above-ground storage tank ("AST") that are beyond the authority of the Regional Board.

G. The Cleanup Order requires Petitioner to perform inspections, repairs and monitoring of its facility that are excessive, duplicative of obligations Petitioner already satisfies pursuant to its NPDES storm water permit for industrial facilities, and/or in excess of the Regional Board's authority.

H. The Cleanup Order requires Petitioner to submit onerous and/or duplicative documentation and perform investigations under arbitrary and unreasonable timeframes.

V. Petitioner is Aggrieved

Petitioner is aggrieved for the reasons set forth in paragraph IV above.

VI. Petitioner's Requested Action by the State Board

Petitioner respectfully requests that the State Board determine that the Regional Board's actions in issuing the Cleanup Order were inappropriate and improper, and that it assume the powers of the Regional Board to amend the Cleanup Order in accordance with this petition and applicable law. Petitioner requests the State Board to hold in abeyance this petition for review pending further discussions between Petitioner and the Regional Board. Petitioner will notify the State Board if it intends to activate this appeal. Petitioner understands it will be given the opportunity to amend this petition and submit detailed points and authorities in the event this petition is converted to active status.

VII. Statement of Points and Authorities

Petitioner will provide a detailed statement of points and authorities in the event it activates this petition for review.

VIII. List of Interested Persons

A list of "interested persons" is attached hereto as Exhibit B.

IX. Statement of Transmittal of Petition to the Regional Board

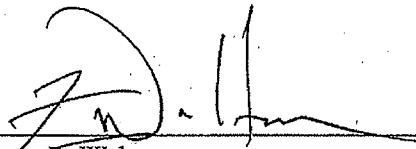
A copy of this petition has been transmitted to the Executive Officer of the Regional Board on February 12, 2009.

X. Request to Regional Board for Preparation of the Administrative Record

By copy of this petition to the Executive Officer of the Regional Board, Petitioner hereby requests the preparation of the administrative record herein. Petitioner reserves its right to request a hearing for the purpose of presenting additional evidence not previously presented to the Regional Board, in accordance with 23 CCR § 2050.6(b).

Dated: 2/12/09

Respectfully submitted,



Zachary R. Walton
Paul, Hastings, Janofsky & Walker LLP
Attorneys for Petitioner H.J. Baker & Bro., Inc.

APPENDIX A

CLEANUP AND ABATEMENT ORDER R5-2008-0710



Linda S. Adams
Secretary for
Environmental
Protection

**California Regional Water Quality Control Board
Central Valley Region**

Karl E. Longley, ScD, P.E., Chair

11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114
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<http://www.waterboards.ca.gov/centralvalley>



Arnold
Schwarzenegger
Governor

16 January 2009

CERTIFIED MAIL
7008 1140 0002 8805 2611

Jeff Kasper, Deputy Director
Port of Stockton
P.O. Box 2089
Stockton, CA 95201-2089

CERTIFIED MAIL
7008 1140 0002 8805 2604

Chuck DeJong, Plant Manager
H.J. Baker & Bro. Inc.
P.O. Box 2089
Stockton, CA 95201

CLEANUP AND ABATEMENT ORDER, SULFUR PROCESSING PLANT, HJ BAKER & BRO. INC AND THE PORT OF STOCKTON, SAN JOAQUIN COUNTY


Enclosed is Cleanup and Abatement Order (CAO) for the subject facility. HJ Baker & Bro. Inc and the Port of Stockton (collectively referred to as Dischargers) own and operate a sulfur processing plant located at Stork Road in Stockton.

The purpose of the CAO is to provide a mechanism to oversee the Dischargers' mitigation measures at their facility. The CAO specifies certain mitigation measures to prevent sulfur from impacting surface water and groundwater.

The Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) staff has worked cooperatively with the Discharger for over six months on the CAO. In this regard, staff reviewed and incorporated the Dischargers' comments dated 31 March 2008 and 9 July 2008. In addition, staff has addressed the Dischargers' most recent set of comments presented to Board counsel on 17 September 2008 by the Dischargers' attorneys via conference call.

In order to conserve resources, paper copies of the referenced documents may not accompany this letter. Interested persons may download the documents from the Central Valley Water Board's Internet website at http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders. Copies of these documents can also be obtained by contacting the Board's office at 11020 Sun Center Drive, #200, Rancho Cordova, California 95670, weekdays between 8:00 a.m. and 5:00 p.m.

California Environmental Protection Agency

 Recycled Paper

Jeff Kasper
Chuck DeJong

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16 January 2009

If you have any questions regarding this letter or the enclosed documents, please contact Mary Boyd at mboyd@waterboards.ca.gov or (916) 464-4676.



STEVE E. ROSENBAUM
Senior Engineering Geologist
Compliance and Enforcement
Title 27 and Non 15 Programs

Enclosures: Cleanup and Abatement Order, Attachment A, and Attachment B

cc: Patrick Pulupa, Staff Counsel, SWRCB, Sacramento
Margaret Lagorio, San Joaquin County Environmental Health Dept, Stockton
Seyed Sadredin, SJVAPQD, Modesto

cc w/o enclosures:

Jeffrey Wingfield, Port of Stockton, Stockton
Richard Valagene, H.J. Baker & Bro., Republic, MO
John T. Maranda, H.J. Baker & Bro., Inc., Laguna Hills
Peter Weiler, ERS Corporation, Walnut Creek
Nicole Granquist, Downey Brand LLP
Susan M. Gallardo, Geomatrix, Oakland
Bill Jennings, California Sporting-Fishing Protection Alliance, Stockton
Ken Berry, California Citizens for Environmental Justice, Jackson

MLB\WWSan Joaquin\HJBaker_cov

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER R5-2008-0710

FOR
HJ BAKER & BRO., INC AND THE PORT OF STOCKTON
MOLTEN SULFUR PROCESSING PLANT
SAN JOAQUIN COUNTY

This Order is issued to HJ Baker & Bro. Inc. (Baker) and the Port of Stockton (Port)(collectively referred to as Dischargers), based on provisions of California Water Code (CWC) section 13304, which authorizes the Central Valley Regional Water Quality Control Board, (Central Valley Water Board or Board) to issue a Cleanup and Abatement Order, and CWC section 13267, which authorizes the Central Valley Water Board to require the submittal of technical and monitoring reports. Throughout this Order, the responsibilities for cleanup and abatement actions are assigned to the appropriate party or parties (i.e., Baker, Port, or Dischargers).

The Executive Officer of the Central Valley Water Board finds, with respect to the Dischargers' acts, or failure to act, the following:

1. Baker owns and operates a processing plant at 65 Stork Road, Stockton (the Site) that converts molten sulfur into sulfur pellets known as "prill." Baker leases the Site from the Port. In 1997, Baker assumed responsibility for the Site's industrial stormwater, and began processing prill at the Site in 2004.
2. The Port owns and operates a 1,100-foot prill conveyor system at the Site. The Port transfers Baker's prill to ships via the prill conveyor system, which extends to a wharf. The Port conveyed or stored prill at the Site from the 1970s up to 1997.
3. As presented in the *Report of Waste Discharge* and the *Sulfur Management Plan*, the Site is a 5.6-acre property located at 65 Stork Road in Stockton, California (APN 145-030-01). The Site is located within the Port's Eastside Complex, east of the San Joaquin River, and south of Wharf 10-11, as shown on Attachment A, a part of this Order.
4. A 3.8-acre portion of the Site has historically been referred to as the "Clay Pit". The Clay Pit was constructed in 1971 for storage of clay pellets. Contrary to its name, it is not a pit or depression. Storage of clay pellets ceased prior to 1997. Sulfur prill stockpiles are currently stored within the 3.8-acre Clay Pit.
5. During the 1970s and up to 1991, Baker processed prill at a facility on Road 21, Port of Stockton. Baker contracted the Port and stevedores to truck the prill via bottom dump to the Clay Pit. The Port and stevedores off-loaded prill at the Clay Pit into a below ground hopper for transfer via below ground and above ground conveyors to ships (Appendix B, Timeline of HJ Baker's Use and Occupancy, Sulfur Management Plan Addendum, July 2006). At this time, the 3.8-acre Clay Pit, the below-grade hopper, and the conveyor were owned and operated by the Port.

6. Between 1991 and 1997, the Port stockpiled Baker's prill at the Clay Pit. The Port used its tunnel and above-ground conveyor belts to move the prill to ships. During this period, the Clay Pit floor was unlined and unbermed (Notice of Intent to Comply with the General Permit to Discharge Storm Water Associated with Industrial Activity, WDID 5B39S000860—active as of March 1992).
7. In November 1997, Baker leased the 3.8-acre Clay Pit from the Port, lined the Clay Pit floor with asphalt, installed berms to control stormwater runoff, installed windscreens on the north western side of the Clay Pit, and paved the road towards the Clay Pit. Baker continued to prill sulfur at the Port Road 21 facility, and contracted with the Port and stevedores to truck and to deposit the prill into the Clay Pit's below-ground hopper. The Port continued to stockpile prill at the Clay Pit and to convey the prill to the vessels. On 3 December 1997, Baker assumed responsibility for stormwater discharges from the Clay Pit (see Finding 18). On 30 June 2004, Baker ceased prilling operations at the Port Road 21 facility. However, Baker continued to use the Port Road 21 facility for additional storage/stockpiling of sulfur prill until 7 April 2005.
8. In June 2003, Baker leased 1.8-acres contiguous with the Clay Pit and began construction of a new prilling plant.
9. On 20 August 2004, Baker began processing molten sulfur at the Clay Pit located at the 65 Stork Road facility. In August 2004, Baker took over the operations of stockpiling prill in the Clay Pit and ceased bottom dumping to the hopper.
10. The current daily quantity of prill stockpiled within the Clay Pit ranges from 1,000 metric tons to 40,000 metric tons.
11. Currently, Baker receives molten sulfur in truck shipments and then coverts the molten sulfur into prill. An overhead radial conveyor moves the prill from the processing unit to the stockpile area, where the prill pellets are dropped from above onto stockpiles. The prill stockpiles are stored outdoors and exposed to the elements. Export of prill via ships occurs approximately nine to ten times per year.
12. Beginning in 1978 and continuing until November 2007, the Port transported prill from the Clay Pit to ships via a 1,100-foot conveyor belt system, which includes a tunnel portion and an above-ground portion. The tunnel portion of the conveyor belt starts at three access ports located within and beneath the prill stockpile area (i.e., the Clay Pit). Prill is pushed into these access ports via heavy equipment, where it is then transported by tunnel conveyor belt to the above-ground portion. The above-ground portion of the conveyor system delivers the prill to the ships. In total, the conveyor system consists of a 400-foot tunnel portion and a 700-foot above ground portion that terminates at the wharf. At times, shallow groundwater is known to percolate into the tunnel section. In November 2007, the Port shut down the tunnel conveyor system for an indefinite period. Baker now stockpiles prill on top of the three access ports.

13. Currently, sulfur prill is stored outside, in uncovered stockpiles on asphalt. Board staff's inspection on 25 August 2008 shows that, where inspected, the asphalt has a typical cracked or "alligator" appearance that indicates deterioration of the asphalt.
14. The facility has not previously been regulated by Waste Discharge Requirements (WDRs).
15. The entire Site is enrolled under the state-wide General Permit for Industrial Storm Water (WDID 5S39I000860). According to Baker's 2 April 2008 letter, non-contact storm water runoff flows south to two storm drains that connect and then flow to a drainage ditch west of a former blending and transfer building. From here, the non-contact surface water runoff discharges to Washington Street and the Port of Stockton's municipal storm water drainage system. Rainfall runoff from the eastern roof of a blending and transfer building flows to downspouts that discharge to a drainage ditch along the eastern edge of building. This ditch also receives and conveys runoff from Stork Road, not associated with the facility. Previous to enrollment under WDID 5S39I000860, Baker was enrolled under WDID No. 5B39S000860.

IMPACTS TO GROUNDWATER AND SURFACE WATER

16. When rainwater contacts sulfur prill stockpiles, a solution is formed that contains soluble materials extracted from the prill. This solution is acidic, with elevated concentrations of electrical conductivity and sulfate. Typically, this solution has a pH range of 1.5 to 6.5 Standard pH Units (SU), an electrical conductivity range of 3,200 to 18,000 umhos/cm, and sulfate range of 2,300 to 9,800 mg/L.¹ For comparison (although not necessarily applicable at this site), the USEPA Primary Maximum Contaminant Level (MCL) for sulfate in drinking water is 500 mg/L; the California short-term upper level for electrical conductivity in drinking water is 2,200 umhos/cm; and the USEPA minimum Secondary MCL for pH in drinking water is 6.5 SU. The Basin Plan's water quality objectives for pH in surface water ranges from 6.5 to 8.5 SU. The solution exceeds these criteria. Throughout this Order, this acidic solution with elevated concentrations of electrical conductivity and sulfate is referred to as "sulfur-contact water".
17. In July 1997 Baker performed an environmental site assessment (SA) of the 65 Stork Road facility. Based on data presented in the SA, as early as 1997 the sulfur-contact water was discharged to bare earth and sulfur fines had migrated off Site. The SA reported that in 1997 the sulfur piles were up to 20-feet high, and the Clay Pit was in "poor condition," and there was significant evidence of off-site discharges of non-storm water. There were no windscreens. In addition, the SA reported that the Site was only partially paved, with major breaches in the partial containment berm. Moreover, there was strong evidence of tracking of fine particulate sulfur from the storage area to Washington Street was evident. Water that was being pumped from the below grade hopper had a pH of 1.9, and was being discharged for percolation to the south of the

¹ Environmental Site Assessment Proposed Lease Facility, Page 22; July 1997; Regional Water Board inspection report March 2005

Site at a rate of less than 5-gallons per minute. Ponded water at the truck off-loading area had a pH 3.1 SU; ponded water at the wash-down area had a pH of 4.1 SU; and water running from the truck off-loading ramp had a pH of 2.8 SU. The pH of soil samples obtained on the Site was acidic; concentrations samples had a pH of 6.2, 2.7, 2.0, 2.1, and 6.1 SU².

18. On 3 December 1997, Baker filed a Notice of Intent to comply with the General Permit to Discharge Storm Water Associated with Industrial Activity (General Permit), and included the 3.8 acres of the Clay Pit and its Road 21 facility in its Notice of Intent. Central Valley Water Board issued WDID 5B39S000860 to Baker for the 3.8 acre Clay Pit and the Road 21 facility.
19. On 10 February 1998, the Central Valley Water Board inspected Baker's Clay Pit facility and found General Permit violations. The inspection indicated that storm water was running off from the sulfur storage area, and the pH and conductivity were indicative of significant pollutants in the runoff. On 10 June 1998, the Central Valley Water Board received a letter from Baker stating that it was performing site improvements, including the installation of new berms or the raising of existing berms.
20. At its October 2004 Central Valley Water Board meeting, the Central Valley Water Board requested that staff inspect the sulfur prill (dry bulk) facilities at the Port (i.e., Baker, Port, Martin Operating Partnership, and Metropolitan Stevedore) to determine whether the dry bulk facilities were degrading waters of the state or if they posed a threat to water quality.
21. In a 10 February 1998 Board inspection by the Board's storm water program, field tests were performed on storm water run off for electrical conductivity and pH. The pH ranged from 2.0 to 3.9 SU, and the electrical conductivity ranged from 760 to 3,860-umhos/cm. In a June 2005 stormwater sampling event at the south drainage ditch, Baker reported a specific conductance concentration of 3,500 umhos/cm. The Board's storm water program uses 200 umhos/cm as an indicator value for specific conductance that there may be a lack of or inadequate Best Management Practices installed at the facility.
22. On 30 March 2005, Board staff inspected the dry bulk facilities, obtained field samples, and recorded observations. Staff noted ponded sulfur-contact water within the Clay Pit (to a depth that was covering a ~2-inch industrial hose); sulfur drift on bare earth in contact with ponded rainwater; groundwater that had been pumped from the Port's below ground conveyor tunnel; and that storm ditches and a sump had evidence of impact from sulfur. Board staff observed sulfur prill along Stork Road adjacent to Baker's facility. The field sample results from the February 1998, March 2005 inspections, and from the June 2005 storm water sampling event are listed below:

² Environmental Site Assessment Proposed Lease Facility, July 1997.

| Location/Source and Date | EC (umhos/cm) | pH (SU) |
|---|--|------------------------|
| Across the road from entrance gate to Site (February 1998) | 760 | 3.0 |
| Runoff from gate to road (February 1998) | 3,860 | 2.0 |
| South drainage ditch (June 2005) | 3,500 | N/R |
| Groundwater pumped from the sulfur conveyor tunnel (March 2005) | 3,200 | 2.6 |
| Storm water sump discharge into the storm water system (March 2005) | 2,300 | 5.6 |
| Comparison values | 200 ^a 900-2,200 ^b | 6.5 - 8.5 ^c |

Notes: **BOLD** lettering indicates the concentration exceeds a comparison value: EC means electrical conductivity. NR indicates not reported. ^a Central Valley Water Board indicator value that there may be a lack of or inadequate Best Management Practices installed at the facility ^b California Secondary MCL. ^c USEPA Secondary Maximum Contaminant Level, USEPA Parameter Benchmark Value, and Basin Plan III-5.0.

23. On 27 November 2006, staff performed a follow-up inspection and photographed an employee cleaning sulfur drift off of Stork Road at a location contiguous to, and outside Baker's property. Staff observed that stockpiles extended above the netting/wind break. However, staff was not able to determine if the sulfur fines were tracked out of the Clay Pit by heavy equipment or migrated outside the Clay Pit by other mechanisms. Nevertheless, sulfur had escaped from the facility boundary.
24. On 25 August 2008, Central Valley Water Board staff inspected the facility and observed vehicular tracks of fine particulate prill that extended out from the Clay Pit and lead south down Stork Road. In addition, Central Valley Water Board staff noted and photographed deteriorated sections of the asphalt within the Clay Pit.
25. Based on the site inspections, Environmental Site Assessment data, and field test results, the low pH and high electrical conductivity are significantly greater than what would be expected from non-sulfur impacted stormwater. These results indicate that the operations have impacted surface water and are a threat to groundwater.
26. During the rainy season, sulfur-contact water is allowed to remain on the deteriorated asphalt in unregulated ponded areas at the Clay Pit. Baker evaporates and/or reuses the sulfur-contact water in the production of prill. Staff notes that in the month of January 2008, 5 ¼-inches of rain fell in the Stockton area³. Based on the aerial extent of the Clay Pit (3.8-acres) and depth of rainfall (5 ¼-inches), the calculated volume of sulfur-contact water is over 500,000-gallons. That is, the Clay Pit could generate over 500,000 gallons of sulfur-contact water in one month of one rainy season. Coupled with the compromised asphalt and depth of sulfur-contact water, staff notes that these ponding, storage, and evaporation operations are a mechanism by which sulfur-contact water percolates through the degraded asphalt into the ground. Thus, any

³ Western Regional Climate Center, Stockton Airport, January 2008

ponded sulfur-contact water seeping through the deteriorated asphalt surface has the potential to discharge into the groundwater and is a threat to water quality.

27. Sulfur operations have been on-going at the facility for 30 years. These operations have impacted groundwater. Groundwater samples obtained from an upgradient well (MW-11) in 2007 had a sulfate concentration of 170 mg/L. In contrast, downgradient samples (MW- 1, MW-3, MW-4, and C-11-25) obtained between 2005 and 2007 had sulfate concentrations that range from 480–2,000 mg/L.
28. A comparison of groundwater data obtained in 1991 versus the data obtained in 2003 and 2007 indicates that the shallow groundwater has been further degraded in the intervening 12 years. In 1991, four groundwater wells were installed (MW-1, MW-2, MW-3, and MW-4): sulfate concentrations in 1991 ranged from 87 mg/L to 440 mg/L, and in 2003 ranged from 597 mg/L to 1,780 mg/L. Based upon Board staff inspections conducted in 1998, 2005, 2006, and 2008, the sulfur-contact water and sulfur piles are not adequately contained to protect the waters of the state. The discharge of sulfur-contact water and sulfur prill at this facility has caused groundwater concentrations of sulfate to increase to up to 2,000 mg/L. The table below shows the upgradient/background well (MW-11), the downgradient wells, and the changes over time to the sulfate concentration in shallow groundwater wells.

Historical Sulfate Concentrations (mg/L)

| Date | MW-11 (Background /Upgradient) | C11-25 (165-foot downgradient) | MW-1 (Sidegradient) | MW-2 (Downgradient) | MW-3 (Downgradient) | MW-4 (Downgradient) |
|-------------|--------------------------------------|--------------------------------------|------------------------|------------------------|------------------------|------------------------|
| 28 Aug 1991 | | | 410 | 87 | 400 | 440 |
| 23 Jun 2003 | | | 597 | 1,780 | 1,412 | 1,478 |
| 10 Nov 2005 | | 2,000 | | | | |
| 15 Nov 2007 | | | 480 | 860 | 1,200 | 1,200 |
| 14 Feb 2007 | 93 | | 450 | NA | 1,100 | NA |
| 24 May 2007 | 170 | | 410 | NA | 1,000 | NA |
| 8 Aug 2007 | | | 450 | NA | 1,100 | NA |

Legend:

BOLD lettering sulfate concentration is above the comparison value of 250 mg/L (California Department of Health Services Secondary Maximum Contaminate Level)
mg/L milligrams per liter
NA not analyzed/not reported

29. In a 12 April 2005 Central Valley Water Board letter, staff informed the operators of the bulk storage facilities (i.e., Baker, Port, Martin Operating Partnership, and Metropolitan Stevedore) that the inspection observations, inspection data, and the case file review support the conclusion that the sulfur piles are not adequately contained to protect waters of the state and that the facilities appear to have impacted groundwater. Further, staff required submittal of a groundwater investigation work plan by 1 June 2005. Follow-up reports were due by 1 September 2005, including the results of the investigation, feasibility study and corrective action measures, and Report of Waste Discharge (ROWD).

30. In a joint letter dated 20 May 2005, Baker, Port, and other dry bulk operators requested extensions to 1 August for submittal of the workplan and to 1 December 2005 for submittal of the investigation results, feasibility study and corrective action measures, and Report of Waste Discharge.
31. To prevent further delays, on 2 June 2005 the Central Valley Water Board ordered the submittal of technical reports pursuant to California Water Code section 13267 and provided extension due dates of 15 July 2005 and 1 December 2005. Further, Baker, Port, and other dry bulk operators were jointly directed to submit a short-term plan to manage sulfur in a manner that would prevent release outside the containment area or from the conveyance structures.
32. On 15 July 2005 and 9 September 2005, Baker, Port, and the other bulk storage operators submitted a joint groundwater investigation work plan and a Short Term Sulfur Management Plan, respectively.
33. In a letter received 14 February 2006, Baker, Port, and the other bulk storage operators jointly requested an extension for submittal of the ROWD from 1 December 2005 to 15 March 2006. On 17 February 2006 the Central Valley Water Board sent a joint Notice of Violation to Baker, Port, and the other bulk storage operators for failure to submit a technical report, including an ROWD, by 1 December 2005. However, in an 8 March 2006 letter, the Board did not recommend that enforcement actions be pursued if the ROWD was submitted by 15 March 2006. Baker, Port, and the other bulk storage operators jointly submitted the ROWD on 15 March 2006.
34. On 24 February 2006, Baker, Port, and the other bulk storage operators jointly submitted its *Groundwater Investigation and Feasibility Study, Bulk Terminals Site* (Report). The Report concluded that relatively elevated concentrations of total sulfur and sulfate are present in groundwater in the immediate vicinity of the Bulk terminals site and in the general area of historical and current sulfur prill storage and operations. The Report recommended the installation and monitoring of additional groundwater wells. Subsequently, eight groundwater monitoring wells were constructed in a lower sandy aquifer. Jointly, Baker, Port, and the other bulk storage operators have monitored these new wells, two of the existing wells, and have submitted three quarterly groundwater-monitoring reports (first, second, and third quarters of 2007). Attachment B shows the locations of all groundwater monitoring wells.
35. In a letter submitted 2 April 2008, Baker stated that it would install a 500,000 gallon above ground storage tank (AST) for storage of sulfur-contact water (in lieu of storing ponded sulfur-contact water on degraded asphalt), install pavement outside the Clay Pit on remaining bare areas where sulfur could accumulate, replace damaged wind screens, and fill in the below grade vault.
36. In a 13 August 2008 email, Baker stated that all areas outside the Clay Pit have been paved, the lower portions of the wind screens have been installed, the work on the concrete vault is proceeding, an engineering firm has been retained to work on the AST foundation, and communications have begun with the tank manufacturer to

coordinate the lead time necessary to install the 500,000 gallon tank according to the schedule in this Order.

37. In a follow-up letter received 9 January 2009, Baker stated that they installed wind screens in the gap between the existing screens and the ground surface; had installed an additional 50-feet of wind screens to the electrical building; had back filled and capped with concrete the truck unloading hopper; had covered with steel plates and asphalt the three tunnel access ports; and plan to complete installation of the 500,000-gallon above-ground storage tank by July 2009.

REGULATORY CONSIDERATIONS

38. The *Water Quality Control Plan Central Valley Region—Sacramento River and San Joaquin River Basins, Fourth Edition* (hereafter Basin Plan), designates beneficial uses, establishes water quality objectives, and contains implementation plans and policies for all waters of the Basin.
39. The facility is in the San Joaquin River in the Sacramento-San Joaquin River Delta (Hydrologic Area 544) of the Basin Plan. The designated beneficial uses of the Sacramento-San Joaquin River Delta, as specified in the Basin Plan, are municipal and domestic supply, agricultural supply, industrial power supply, contact and non-contact water recreation, warm and cold freshwater habitat, migration of aquatic species, aquatic habitats for reproduction and early development, wildlife habitat, and groundwater recharge.
40. The beneficial uses of underlying groundwater, as stated in the Basin Plan, are municipal and domestic supply, agricultural supply, industrial service supply, and industrial process supply.
41. CWC section 13304(a) states, in relevant part, that:

Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a Central Valley Water Board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the Central Valley Water Board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

42. CWC section 13267(b)(1) provides that:

In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

43. The technical reports required by this Order are necessary to ensure compliance with this Cleanup and Abatement Order, and to ensure the protection of the waters of the state. The Dischargers own and/or operate the facility subject to this Order.
44. The issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act (CEQA) (Pub. Resources Code, section 21000 et seq.), pursuant to California Code of Regulations, title 14, section 15321(a)(2). The implementation of this Order is also an action to assure the restoration of natural resources and/or the environment and is exempt from the provisions of the CEQA, in accordance with California Code of Regulations, title 14 sections 15307 and 15308. This Order may also be classified as a minor action to prevent, minimize, stabilize, mitigate or eliminate the release or threat of release of hazardous waste or substances, and is exempt from the provisions of CEQA in accordance with California Code of Regulations, title 14 section 15330.

IT IS HEREBY ORDERED that, pursuant to CWC sections 13304 and 13267, HJ Baker & Bro Inc. and the Port of Stockton must cleanup and abate, forthwith, the molten sulfur processing facility. "Forthwith" means as soon as is reasonably possible. Compliance with this requirement must include, but may not be limited to, completing the tasks listed below:

1. Storage or ponding of sulfur-contact water on the floor of the Clay Pit is prohibited.
2. Discharge of sulfur-contact water to the vadose zone is prohibited.
3. The discharge, release, and/or disbursement of sulfur prill, sulfur fines, and/or sulfur-contact water outside the boundary of Baker's property is prohibited.
4. The discharge or release of sulfur or sulfur-contact water to groundwater, the Port's tunnel, and/or surface water is prohibited.
5. By **27 February 2009**, Baker must submit the following:
 - a. A scaled Comprehensive Site Map showing the proposed location of the new 500-gallon above ground storage tank, and existing berms and K-rails, sumps, the hopper, sulfur-contact water drainage and collection/conveyance systems, the access ports to the tunnel and above ground conveyor, and sulfur-contact water swales, ditches, and piping. The surface area, in square feet, of the prill stockpile area must be included. A hard copy (11"x17") and electronic format (i.e., PDF) file must be submitted.

- b. A 12-month water balance with the local monthly mean precipitation (based on a 100-year precipitation event), inflow, storage capacity, outflow, evaporation, and rainfall from a 100-year 24-hour event storm event. Inflow must include drainage from the sulfur-contact surface areas, sulfur contact water, process water, make-up water, any liquids that enter the concrete vault, and any other liquid that enters the process. The source and monthly usage of supply water must be included in the water balance.
 - c. Documentation that the sumps and sulfur-contact water conveyance system have passed leak detection tests.
6. By **31 March 2009**, the Port must submit the following documentation:
- a. A report showing that the tunnel has been cleaned and placed out of service. Whenever the tunnel is brought back into service, the Port shall notify the Central Valley Water Board within 60 days of the date of start of service.
 - b. The results of two tunnel inspections performed during the 2008–2009 wet season. The Port must inspect the inside of the tunnel at the access ports to determine if there is evidence, or not, of sulfur contact-water seeping/leaking through the access ports and into the tunnel. Inspections must be performed during the first hour of discharge of any other storm event of the season.
7. By **31 July 2009**, Baker must submit documentation that the following protective measures have been completed:
- a. Sulfur-contact water is prevented from ponding or accumulating on the floor of the Clay Pit,
 - b. Sulfur-contact water is prevented from entering the vadose zone through the deteriorated asphalt in the Clay Pit, and
 - c. Continuous and uninterrupted operation of the 500,000-gallon AST has commenced.

Any person signing a document submitted under this Order must make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

In accordance with California Business and Professions Code sections 6735, 7835, and 7835.1, engineering and geologic evaluations and judgments must be performed by or under the direction of registered professionals competent and proficient in the fields pertinent to the required activities. All technical reports specified herein that contain workplans for, that describe the conduct of investigations and studies, or that contain technical conclusions and recommendations concerning engineering and geology must be prepared by or under the

required activities. All technical reports specified herein that contain workplans for, that describe the conduct of investigations and studies, or that contain technical conclusions and recommendations concerning engineering and geology must be prepared by or under the direction of appropriately qualified professional(s), even if not explicitly stated. Each technical report submitted by the Dischargers must contain the professional's signature and stamp of the seal.

The Executive Officer may extend the deadlines contained in this Order if the Dischargers demonstrate that unforeseeable contingencies have created delays, provided that the Dischargers continue to undertake all appropriate measures to meet the deadlines and make the extension request in advance of the expiration of the deadline. The Dischargers shall make any deadline extension request in writing. An extension may be denied in writing or granted by revision of this Order or by a letter from the Executive Officer. Any request for an extension not responded to in writing by the Board shall be deemed denied.

If, in the opinion of the Executive Officer, the Dischargers fail to comply with the provisions of this Order, the Executive Officer may refer this matter to the Attorney General for judicial enforcement or may issue a complaint for administrative civil liability. Failure to comply with this Order may result in the assessment of an Administrative Civil Liability of up to \$10,000 per day of violation pursuant to the California Water Code sections 13268, 13350 and/or 13385. The Central Valley Water Board reserves its right to take any enforcement actions authorized by law.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

This Order is effective upon the date of signature.



PAMELA C. CREEDON, Executive Officer

16 January 2009

(Date)

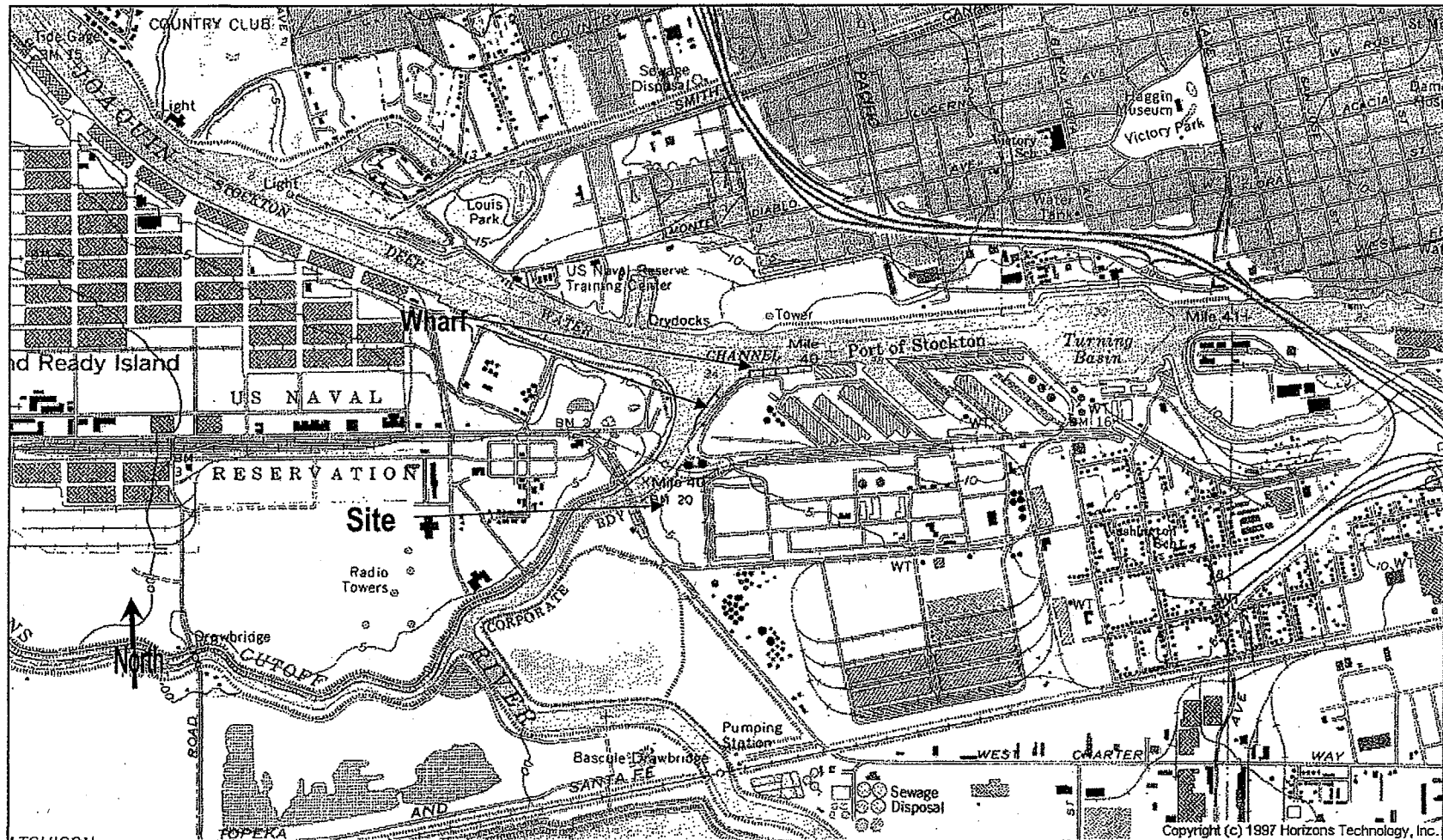
Attachments:

Attachment A, Site Location Map

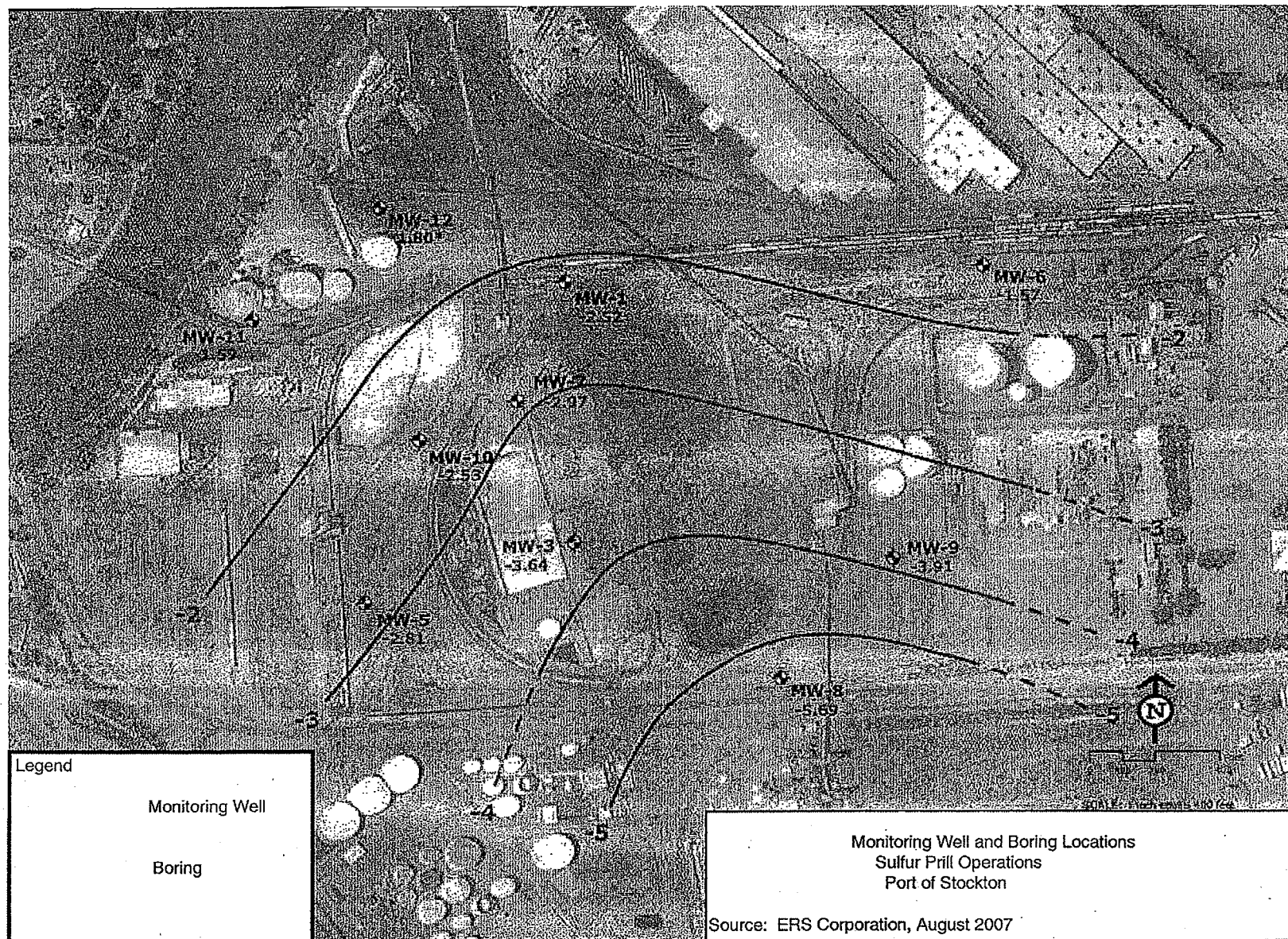
Attachment B, Monitoring Well Locations

CLEANUP AND ABATEMENT ORDER NO. R5-2008-0710
HJ BAKER AND THE PORT OF STOCKTON
MOLTEN SULFUR PROCESSING PLANT
SAN JOAQUIN COUNTY

ATTACHMENT A



HJ Baker and the Port of Stockton
65 Stork Road, Stockton, CA
Vicinity Map



APPENDIX B

LIST OF INTERESTED PERSONS

List of Interested Persons

H.J. Baker & Bro., Inc.
Sulphur/Tiger-Sul Products Plant
65 Stork Road
Stockton, California 95203

H.J. Baker & Bro., Inc.
Corporate Headquarters
228 Saugatuck Avenue
Westport, Connecticut 06880

Martin Operating Partnership
2717 W Washington Street
Stockton, California 95203

The Port of Stockton
2201 West Washington Street
Stockton, California 95203

Metropolitan Stevedore
720 East 'E' Street
Wilmington, California 90744